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File No 3. Slip 1.

Hookumnamahs for Punchayets and for the practice of the Civil Courts of Law in the Bangalore Division

No. 287

To

The Secretary to the Commissioner
for the Government of the Territories
of the Rajah of Mysore

Bangalore

Sir,

Court
3-36

I had the honor on the 9th
of August last, to promise to submit,
drafts of Hookumnamahs for Punchayets
and for the practice of the Civil Courts
of Law in this Division; and in
forwarding the accompanying papers
I am sensible that some apology is
required for going beyond the instruc-
tions of the Commissioner, which did
not expressly call for them. They
are merely offered in that spirit of
confidence, which he has so much
encouraged, and which induces me to
hope that he will excuse the motive
although the measures suggested, may
in no wise be worthy of adoption.

Some

2 Some rules for the convention and conduct of Punchayets, have however undoubtedly became necessary; because these bodies have now acquired a prominence and importance, which the first perusal of the rules for the Court of Justice would not seem to be assigned to them. Punchayets

3. The reason of this is, that the abolition of fees, has in reality changed the aspect and practical bearing of the existing Civil Code, by forcing upon the Superintendent and Moonsiffs, the constant employment of the Punchayets which has perhaps only intended as an optional alternative, when demanded by the intricacy or complexion of the case, or the wishes of the parties

4 There is now no such alternative. It is true, that by the slow agency of the Punchayet, a large body of Punchayetdars, is subjected to an irksome and laborious Office, and the losing party dissatisfied by the refusal

of

of an appeal, but on the other hand,
a suit without costs, will assuredly
be carried on to a Court of appeal also
without costs; and justice to the parties
renders it preferable to procure a dilatory
and often unsatisfactory decision to
condemning the Suitor in whose favor
it is decided, to the endless delay which
he must endure when the appeal Court
into which he is brought is clogged and
crowded with almost every suit from
every inferior tribunal; and this evil
must go on increasing, as the file
accumulates for the dishonest party
will find a greater inducement to
drag him into the appeal Court, as the
arrears of business in that Court increases.

5 But justice to the parties is
not the only impulse to this choice.
Irksome as the employment of Pun
chayetdars is to themselves, and
unpopular as it is to the Suitors,
their agency is here for mutual pro
tection, imperative upon the Superintendent

and

Moonsiffs in their capacity of appeal Judges Now that no fees are levied without the intervention of a Punchayt almost every suit decided in the Salook would, as has been noticed, be brought in appeal before the Moonsiffs, and every suit decided by him to the Superintendent.

6 The prompt and simple character of a Native Court of Justice, would thus at once emerge into a Court of Chancery; and more than this, the Judicial Establishments, and the present Judicial machinery would be perfectly inadequate, to perform the work required.

7 It would not be enough to give a larger number of Moonsiffs, because that would only increase the burden of the Superintendent and enlarge the file of his Court, which would thus become a vortex, into which almost every Suit in the Country would be thrown by one or other of the parties and from which a lapse of years could only extricate

extricate it. To appoint another European Judicial functionary, would, like the appointment of more Moonsiffs, injure the utility of the Superintendent, whose Revenue and Judicial functions do throw light upon each other, and give him an insight into character and customs, which he could not obtain on their separation and even, if the finances of the state could allow it such an appointment would I feel assured, rather minister to a depraved appetite for litigation, than afford that which it is the sole duty of a Government to provide, redress to those who suffer wrong.

8 To return to the Punchayets. Two great objects present themselves in their employment. The first, the security for the equitable decision of his case, which the opinions of an intelligent and unbiassed body gives to the Suitor; and secondly, the amelioration in the tone of Society, which

which the exercise of Judicial functions, by a large portion of the community, might be hoped to effect.

9 The inclosed rules, which have been chiefly drawn up by Mr Montgomery are intended to secure the services of the most respectable classes of the inhabitants, who would of course be the most fitting instruments of dispensing justice, but some further provisions must be made, for rendering their duties gratifying to themselves, without which they cannot be attended to, with these moral benefits which would result from the situation of a Punchayetdar being regarded with respect by the public, or complacency by the Individual

10 If Jurs were re-instituted or fines for false suits established, litigation would sufficiently diminish, to relieve the Punchayetdars from a great portion of their present laborious duties, which might be further diminished, by leaving it to the choice of the parties,

wherther

whether their case should be decided by Punchayet, or by the Judge alone.

11. The Amount realized from these sources, would also furnish mean for another very desirable method, of rendering a Situation agreable to the present feelings of the Community. So little public Spirit has been fostered by the late Government, that I believe there is no part of India, in which the public good, or mere honorary distinction, is so totally powerless as a motive to action, as in Mysore. This is by no means owing to the absence of real energy or enterprize of Character, but to the absolute want of any thing, to give these qualities a beneficial direction; and a Mysorean must be taught, that his influence and respectability will be enhanced by taking a Share in the Judicature of his Country, before he can believed it.

12. The Revenue arising from fees would be much more than sufficient

Sufficient to give an allowance of
half a Rupee a day, to five Punchayet-
dars in the Superintendents Court,
and of a quarter of a Rupee to five
others in the two Moonsiffs Courts,
as the Marginal Note will exemplify;
and this number of Jurors would
under the reduced number of
Suits, perhaps be Sufficient for all
purposes.

12. In the event of establishment of
fees in Civil Suits, the parties might,
where they desired a Punchayet, be
allowed to select such two members,
from the list of Punchayetdars taken
as proposed in the Rules, and the
fifth taken from the same list to be
named by the Sirkar, which is I believe,
the course pursued in the Madras
Territories. In Criminal cases or in
Civil Suits, if the parties be not allowed
a Selection as proposed, the Punchayetdars
might be chosen by lot by an Officer
of the Court, in the presence of the

prisoners.

prisoners or parties, under such provisions for Challenge, as might be thought necessary.

Fees

14 I have so often adverted to the ills which have resulted from the discontinuance of fees in a State of Society similar to that of Mysore, that I am almost apprehensive of appearing self-opiniated on the question, and the only excuse which I can therefore offer in again recurring to the subject, is to make the Commissioner acquainted, with the circumstances which induce me to suppose, that their discontinuance, taken with the inseparable consequence of the employment of an unpaid and unrespected Panchayet, is decidedly unpopular, and places the Government with regard to this Enactment by no means in that favorable posture in the Eyes of the people, to which its anxiety to promote the temporal welfare of its subjects entitles it.

I

15. I have already so fully alluded in the Memorandum of the 9th August last, and the letter of the November 1835, to the hardships suffered by the respectable classes of the Community by their being dragged into a Court of Law, and subjected to the expence of summoning witnesses to disprove false accusations; and to the complexity which exaggerated pleas must introduce into Judicial proceedings, that I shall at present confine myself at a adducing a few instances, in illustration of the punctual effects of the present system.

16. A Suit was filed in my own Court in the Year 1835 for Rs. 52076-15-" which was withdrawn at the request of the plaintiff on her receiving from the defendant, a sum of Rs. 1,951. 2. "

17. In the Moonsiffs Court of Astagram, the following is a Statement Shewing the amount for which 16 Suits have been filed and those for which such

Case

11

case has been withdrawn by a mutual accordance of the parties

Memorandum

		Rs	a	p			Rs	a	p
1	Suit filed for	1191	11	"	Accommodated for		65	"	"
1	do	514	7	6		do	46	8	"
1	do	407	7	4		do	105	"	"
1	do	778	2	4		do	285	"	"
1	do	142	"	"		do	50	"	"
1	do	203	10	4		do	30	"	"
1	do	2036	5	"		do	650	"	"
1	do	640	"	"		do	320	"	"
1	do	1652	15	4		do	645	12	1
1	do	509	1	4		do	254	8	8
1	do	523	10	"		do	112	"	"
1	do	368	14	"		do	120	"	"
1	do	240	1	"		do	116	"	"
1	do	604	14	6		do	87	8	"
1	do	2366	15	"		do	11511	"	"
1	do	142	"	"		do	10	"	"
16	do	12322	2	8	Accomodated for		4428	4	9

18 The undermentioned is a Memorandum of 13 Suits, which have been withdrawn from the Moonsiffs Court

Court as altogether groundless by the plaintiff themselves in the various pretexts noted in Each.

		Rs	a	p	
1 Suit for	———	1118	3	"	Withdrawn, the plaintiff confessing that he was not entitled to one cash
1 ———	do ———	580	"	"	——— do ——— do ———
1 ———	do ———	340	"	"	Withdrawn finding on Examining his Accounts that Nothing was due to him.
1 ———	do ———	4609	1	5	——— do ——— do ———
1 ———	do ———	3255	3	"	Withdrawn - the defendant having promised to provide for him.
1 ———	do ———	448	"	"	Withdrawn - out of Charity to the defendant
1 ———	do ———	639	6	"	Withdrawn - Because plaintiff had discovered that he ought to bring his action against another person.
1 ———	do ———	776	10	2	Withdrawn - Because he was willing to give all the money to the defendant
1 ———	do ———	371	"	"	——— ditto ——— ditto ———
1 ———	do ———	1018	3	"	——— ditto ——— ditto ———
1 ———	do ———	2000	"	"	Withdrawn - Because he would settle it in his Caste.

13 Sep.

1 Suit for 580. " " } Withdrawn - because the Defendant was husband to the plaintiff

1 ——do—— 1018. " " } Withdrawn - because the Defendant gave him his daughter in marriage

18 The following is a Statement of a few of the Suits decided in the Sum Court intrusting the amount decreed with that claimed by the plaintiff

1 Suit for	1093. " "	Decreed	210. " "
1 do	4403 " "	do	1000 " "
1 do	386. 12 "	do	68 " "
1 do	813. 4 "	do	381. 4 "
1 do	2000. " "	do	503 5. 4.
1 do	2092 10 "	do	806. " 6.
1 do	305. 7. "	do	66. 15 "
1 do	4539. "	do	671. " "
1 do	692. 5. 10.	do	148. 10. 5.
9 Suits	16,325. 6. 10.	Decreed	3855. 3. 3.

and many others, in which the decrees do not equal a half the sum claimed.

19 It is almost needless to observe, that the mixture of truth and falsehood in these instances

is mischevous as well embarassing, as being, in a doubtful case, very likely to lead to an unjust decision. If the Evidence in favor of the false part of a suit be detected, it will tend to throw suspicion upon that part of the case which is true; whereas, if it be well got up it will derive support from that part of the case, which is free from suspicion.

24 But it still remains to be shewn that the abolition of fees, connected as it necessarily is with the employment of a Punchayet, and the refusal of an appeal, is decidedly unpopular. I had heard this asserted from so many quarters that with a view to ascertain the real feeling on the subject, two questions were drawn up in Canarese and sent to the Sur Ameen and Amildar of Mysore, the one to be signed by such of the Sowcars and Merchants as desired the re-institution of fees with an appeal and the other, by those who preferred the continuance of the present system of

Punchayet

Punchayet decesion, subject to no public
tax, and open to no appeal except in cases
of proved Corruption or gross partiality.

22. The one in favor of Fees, has been returned with 226 Signatures containing the names of the most respectable & Merchantile Inhabitants and comprehending a numerous portion of the most usual class of litigants; while the other, has not received a Single Signature

23. The Amildars and Surameen were both strictly enjoined, to Explain to all parties, that the object was to arrive at their real Sentiments, and that they were to be perfectly free in giving their opinion.

24. The unpopularity of the Punchayet = system is of course attended with demeaning association, both in the mind of the Punchayetdars and in that of the public, with regard to the purity or wisdom of their decesions and thus not without some real cause.

The

25. The decision of a Punchayet was recently brought to me by the Moonsiff, in which they had recorded that for certain reasons one side of the question was made good; but for certain other reasons, it could not be considered as substituted; and no argument or persuasion of the Moonsiff, who reasoned with them for sometime, could prevail on them to state, on which side the Evidence preponderated.

26. A Schedule of 9 cases has also been forwarded by the Principal Sudder Moonsiff on which appeals have been brought before him, and where, although no corruption or causes of partiality could be proved, the decisions of Punchayets are manifestly at variance with Justice

27. The Natural effect of this must be, that in time suspicion and discredit will attach to those opinions of Punchayets, not only in Civil, but in Criminal Cases, where it is of such

most

vast importance that they should, besides possessing in effect soundness and intelligence, enjoy likewise the reputation of those qualities

28 Though the re-institution of fees do however seem to me to be the most direct method of confining Suitors to veracity, of denying unnecessary litigation, and of opening a way for the introduction of a wholesome system of Punchayet, while the labors of that body would at the same time be alleviated, I would not be considered as pressing upon the Commissioner no particular and perhaps objectionable remedy for evils, but merely to bring those evils to light as they exist

29 The Substitution of fines for fees, was objected to in the Memorandum of the 9th August last, as liable to place the Superintendent and Commissioner rather in an invidious than a protecting Character to the people but a plan has since been suggested,

by

by which this ~~old~~ Scale might be avoided, viz the Exaction of a graduated fine of so much per Centage, on whatever Amount might be found to have been falsely or fraudulently introduced into the suit of any plaintiff, This Scale, if published would relieve the officer exacting the penalty from the odium of individual and arbitrary Judgment; would moreover exactly proportion the punishment to the offence.

29 Whatever may be the decision with regard to the re-establishment of Institution fees, a few Rules for the practice of the Civil Courts may be of use; and those now transmitted, are intended to produce greater simplicity and expedition in the procedure, than now obtains.

30 Scarcely any fresh Rules are proposed for the practice of the Criminal Courts, as those now existing are admirable when duly acted on. but of course every measure, which would tend to add to the respectability and independence of the Punchayet, would promote

promote the public confidence, and the Security of life and liberty

37. It has already been proposed in the Memorandum of the 9th August last, that some very general classification of Crimes, might with advantage be attempted, and it might be conducive to the interest of Morality, as well as agreable to the feelings of the community, if some provision were published for the prosecution of the Crime of Adultery, and the confiscation of goods and the imprisonment of the person in failure of the payment of the damages awarded. The current of native feeling is, I believe more in favor of a Criminal process, but a Civil action would perhaps be preferable, as allowing an appeal in the event of harsh decisions which might sometimes be anticipated.

I have the honor to be
Sir
Your most Obed.t Servant

Superintendents Office
Astagram Division
Mysore
26th November 1836

B/

To
The Secretary to the Commissioner for the Government of the Territories the Rajah of Mysore
Bangalore

Dated 26th November 1836

Transmitting Drafts of Hookumnamahs for Punchayets — and for the practice of the Civil Courts of Law — with suggestions on the subject.

8/

Draft of a few Rules for the Practice of Courts.

The following suggestions are offered, with a view of alleviating the evils of delay and irregularity now existing in the Courts of this Division

Civil Justice

I That on the list of Witnesses delivered in by either party, such party should be required to note the general points on which each Witness is called to speak

II That the Judge alone, if trying the case on his own responsibility, or with the consent of the Punchayet, if aided by that body, be empowered to reject all evidence manifestly not bearing on the points at issue, noting his reasons for so doing on the record.

III That no party be allowed to summon fresh evidence, unless to speak to some point, which has come to light during the progress of the trial, and then only with the consent of the Judge or the Judge and Punchayet, as the case may be

To

IV To insure the more regular and speedy attendance of Evidences, who have attested Summonses, the powers of Judicial Officers to levy fines, should either be greatly increased; or if this be disapproved, witnesses wilfully absenting themselves without just cause should be authorized to be apprehended, by warrant.

V That no such warrant be issued unless sufficient notice has been given to the Witness in the Summons.

VI That Assessors and others, to whom Summonses are sent for service shall be directed to return the Summons (served or unserved) within seven days of its receipt.

VII Assessors to be liable to fine, for delays in serving Summonses.

VIII If on examining the original plaint, it appears to the Officer in whose Court the suit was filed, that no prima facie case has been made out for the plaintiff, he (the Judge) should have the power of non-suiting him, and

the

the defendant need not be called on for an answer.

IX An appeal might lie to the Superintendent from all non-suits of the inferior Courts

X In all Mahazurs adjudging Shares of family or other property, the value of such Share, should be distinctly stated, and recoverable if the property itself is not forth-coming.

XI Officers of the Courts in which Punchayets are Sitting, should have in all cases, a directing power

XII They should point out to the Punchayet the facts to be decided on and endeavour to prevent as much as possible any wandering from the subject, and the including in their Mahazurs, any person or matter unconnected with the Suit.

XIII In all cases, where points of Hindoo or Mahomedan Law are concerned the written Opinion of the Mufty or Pundit should be

obtained

obtained before trial, stating what the Law will be, provided the facts pleaded by both or either parties, are substantiated.

XVI' By this opinion (after the facts are found) the Punchayet should be obliged to give their Mahazur

XV In the event of the decision of Punchayet, being in the opinion of the Judge manifestly contrary to Justice, he (the Judge) to have the power of pronouncing on his own responsibility a decree at variance with the Punchayets opinion, detailing however at length the reasons of his difference

XVI The Judge to be bound in all such cases, to award the suit within the prescribed period for appeal to the next superior tribunal, in which the opinion of a new Punchayet shall be taken

XVII In all criminal cases, the crime with which the Prisoner is charged should be stated in the simplest, plainest manner, and in the fewest public words

Criminal Justice

XVIII The Judge may, when

necessary

necessary, point out simply to the Panchayet the facts to be decided on, making his charge to them a matter of record.

XIX Panchayetdars in Communal Cases are not to include in their Mahazurs, persons not on their trial; but may appeal to them any Remarks, which may appear to them necessary, for the prosecution of other persons against whom Criminating matter may be brought to light, in course of their Investigation.

Mysore
26th November 1836.

Draft for the Constitution and Constitution of Punchayets

The Evils of the present System appear chiefly to be

1st That the Punchayetdars are selected almost entirely from one class of the Community, though the Litigants consist of all.

2nd[ly] That this class does not include highest degree of intelligence procurable

3rd[ly] That this classes not numerous enough to supply the present great constant, & / under any modified system / the heavy demand for Punchayets without exacting from it, a Sacrifice of time to the public Service, which is altogether unreasonable and which as a Commercial body, it can least afford to spare.

4th[ly] That the investing / as is now the case / of any single class of Society, with almost plenary Judicial Authority opens a door to Corruption, which

must

under a more extended system of selection, could not to so great a degree exist.

To remedy these defects it is suggested

I That persons of all Castes and descriptions be liable to serve in Punchayets under the following rules and restrictions

II That with the indispensable proviso of respectability of Character, a minimum qualification be fixed, based on household property in towns, and on landed property in the Talooks; and which shall include all that class now liable to serve on Punchayets, and all the wealth, respectability, and intelligence above it.

III The classification of household property in Towns might rather be regulated by the quantity of ground attached to such dwelling, or the number of Unkanahs of which such dwelling consists

IV The classification of landed property, to depend on the extent of land under cultivation

V Out of this general list of Punchayet classes, or further division in two

Grades

grades might be made on such qualification, as on further Consideration may appear necessary

VII The object of this division, is to form two classes of Jurors. The higher class, which would thus consist of the most wealthy, to constitute a body of special Jurors, to be employed in the trial of appeals, or Civil Cases of importance, before the Superintendent and Moonsiff.

VIII To the special Punchayet's by qualification, might also be added any persons, who from high Character, family, or Education, the Superintendent might think worthy of this distinction

VIII The other Punchayetdars consisting of the great mass of the Middle classes to do the whole duty of the Sur Ameens, Amils and inferior Courts; and such part of the Moonsiffs as may not fall within the provisions of the Specials.

All

IX All matters of Caste affecting the Community to be decided by the Special Punchayetdars

X Almost the future triennial business might be performed by the 2nd class or petty Punchayetadars

XI Where a house that is qualified to return a Special Punchayetdar, contains a family of father, and sons brothers &c every male member must be liable to serve. but the head of the family only as a Special; except in cases of brothers of an undivided family whose father is dead, when all might be specials so long as they are undivided

XII All persons unable to attend from sickness to be excused, upon them sending a qualified substitute

XIII Persons making frivolous excuses, shewing a general unwillingness the summons, to be fined at the discretion of the Judge of the Court, to which they are summoned, but an appeal may lay to the Superintendent from these fines.

The

XIV The list of Punchayatdars to be kept by the Amildars in the Talooks, and by the Head Police authority in the large towns

XV If a Punchayetdars be taken by rotation, such an arrangement to be made in the lists as to prevent as much as possible, the preponderate of any one class or Caste, in any one Punchayet

Mysore
26th November 1836